148 U S 134

RECORD, CASE NO. 15027.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1892.

TERM NO., 1060.

THE UNITED STATES, APPELLANT,

vs.

FRANK GATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL 25, 1892.

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1 IN THE COURT OF CLAIMS.

FRANK GATES
vs.
THE UNITED STATES. } No. 17039, B.

I.—*Petition.*—*Filed May* 27, 1891.

To the honorable the Court of Claims:

The claimant above named respectfully represents:

I. That he was, by due and regular appointment, from the 24th day of May, in the year 1888, to the 31st day of July, in the year 1888, a letter-carrier in the post-office, at the city of New York, in the State of New York, of the class entitled to a salary of $1,000 a year.

II. That during the period aforesaid he was, from time to time, actually and necessarily employed in excess of eight hours a day, in the performance of the duties assigned to him as such carrier, aggregating an excess, as aforesaid, of 169 hours and 9 minutes.

III. That by an act entitled "An act to limit the hours that letter-carriers in cities shall be employed per day," the claimant became entitled to, and hereby claims, extra pay for all the time during which he was employed, as aforesaid, in excess of eight hours a day; that he has applied to the Post-Office Department for payment of the same, and that the same has not been paid.

IV. That no other action than as aforesaid has been had on this
2 claim in Congress or by any of the Departments; that the claimant is the sole owner of this claim and the only person interested therein; that no assignment or transfer of this claim, or of any part thereof or interest therein, has been made; that the claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets; that the claimant is a citizen of the United States. And the claimant believes the facts as stated in this petition to be true.

And the claimant prays judgment for $66.06, besides costs.

GEORGE A. KING,
Attorney of Record.

CHARLES & WILLIAM B. KING,
Counsel.

STATE OF NEW YORK, *county of New York, ss:*

Frank Gates, being duly sworn, deposes and says that he is the claimant, that he has read the above petition, and that the matters therein stated are true, to the best of his knowledge and belief.

FRANK GATES.

Subscribed and sworn to before me this 20th day of April, 1891.

[SEAL.] THOS. JOHNSON,
Notary Public, N. Y. Co.

3 II.—*Traverse.*—*Filed July* 14, 1891.

And now comes the Attorney-General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and ha' not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

JOHN B. COTTON,
Assistant Attorney-General.

4 III.—*Opinion of the court.*—*Filed Mch.* 7, 1892.

NOTT, J., delivered the opinion of the court:

These cases affect the compensation of probably all the letter-carriers in the United States. The statute under which they arise is singularly brief and clear, and expresses in unmistakable terms the legislative intent. But the services of letter-carriers are so peculiar and ill-defined that the application of the law to the facts is no easy task. The statue is in these words:

"That hereafter eight hours shall constitute a day's work for letter-carriers in cities or postal districts connected therewith, for which they shall receive the same pay as is now paid for a day's work of a greater number of hours. If any letter-carrier is employed a greater number of hours per day than eight, he shall be paid extra for the same in proportion to the salary now fixed by law." Act 24th May, 1888 (25 Stat. L., p. 157).

So far as compensation is involved there are four classes of carriers, receiving annual salaries of $1,000, $850, $800, $600. Act 31 Jan'y, 1887 (24 Stat. L., p. 355). So far as services are involved there are apparently two classes: one like the carriers in New York, and probably in all the great cities, who are occupied incessantly from morning to night without an intermission for rest or food; and one like the carriers in Salt Lake City, who have a morning and afternoon collection and delivery which per se requires less than eight hours of service.

On the part of the claimants it is maintained that all of the work which letter-carriers perform by order of their postmasters is service contemplated by the statute, and that in estimating the extra service an extra hour is not to be reckoned as the eighth part of a day; but that the court and the accounting officers must take into consideration the fact that
5 under another statute they are entitled to fifteen days' leave of absence without loss of pay (act 27th June, 1884, 23 Stat. L., p. 60), and under the postal laws and regulations to six holidays during the year (Regulations 1887, sec. 483), and that at common law they are not required to render service on Sunday, and by the Regulations, sec. 481, only for a brief period, leaving two hundred and ninety-two days in the year which should be taken as the divisor of their annual salary, instead of three hundred and sixty-five.

On the part of the defendants, it is maintained that the only service which is to be reckoned in estimating the eight-hour day is carrier service proper; that the Regulations, sec. 647, provide that—

"Carriers shall be employed in the delivery and collection of mail matter, and during the intervals between their trips may be employed in the post-office in such manner as the postmaster may direct, but not as clerks."

And that the Revised Statutes, sec. 1764, provide that—

"No allowance or compensation shall be made to any officer or clerk by reason of the discharge of duties which belong to any other officer or clerk in the same or any other department; and no allowance or compensation shall be made for any extra services whatever which any officer or clerk may be required to perform, unless expressly authorized by law (§ 1764)."

Hence it is argued that the statutes and regulations are to be construed together, and that the additional pay which the eight-hour act grants is to be restricted to cases where the carrier performed service authorized by law; that is to say, the service of a carrier and not of a clerk.

The Salt Lake City cases, it is believed, embrace, with a single exception, all the questions presented by the New York cases and many more besides. We will therefore deal with the facts which they bring before the court.

In the Salt Lake City post-office the force employed consisted of three clerks and nine carriers. It appears from the testimony of the postmaster himself that the three clerks were insufficient to perform the work of the office; and it appears from the evidence that the work of the carriers in delivering and collecting letters outside of the post-office building did not occupy them more than five hours a day. A third kind of work appears in the case, which has been one of the debatable grounds of the argument, viz, the work which carriers perform within the post-office building upon the mail matter which they are to deliver. Before they go out on their rounds each takes a package of unassorted letters, i. e., no further assorted than to segregate from the mass those which belong to each carrier's route, and arranges them in the order of street and number. This is called "routing" the letters. Where the street and number are not given in the direction on the letter, this service also involves looking up the residence in the directory or in noting it from memory. After the carrier returns from his round he also has work to do in connection with his carrier service, such as returning letters where the party to whom they were addressed could not be found.

In the Salt Lake office the carriers, by order of the postmaster, rendered the following service during each working day:

At 7 a. m. the carriers reported for duty. For half an hour they were employed inside the post-office proper in distributing the mail, by placing it in the general-delivery boxes. For half an hour they were occupied in "routing" their own letters; that is, in arranging them for ready distribution on their rounds. At 8 a. m. they went out on their first
6 delivery, returning at various times, according to the quantity of mail matter to be delivered, but generally within three hours. From the time of their return until 1 p. m. they were engaged within the post-office in the distribution of the mail. From 1 to 2 they were allowed an hour for dinner. At 2 all were required to report for duty. For an hour they were again engaged in the distribution of the mail and in "rout-

ing" their own letters. At 3 they went out on their second delivery, returning ordinarily about 5 o'clock. From 5, with an interval of an hour for supper, they were again employed in the work of distributing the mail until, ordinarily, 8 o'clock or later.

Such was the ordinary day of a letter-carrier in this office. It may be analyzed by saying that he was absent from home thirteen hours; that he was allowed two hours for his meals; that he was occupied outside the building in the work of delivering and collecting letters five hours; that he was occupied in preparing his mail matter for the route and in making reports and returns in regard to it two hours; and that he was employed in the work of distributing letters within the building for general delivery four hours. It is also to be observed that for at least an hour this work was not performed "during the intervals between his trips" (in the words of the regulation above quoted), but was performed after his last service as a letter-carrier had ended.

The work which letter-carriers may do during the intervals between their trips and the work which they may not do as clerks are wholly undefined. No regulation, order, or instruction of the Post-Office Department can be found which would inform postmasters or enlighten the court as to what these services are. The term clerical service, strictly, means a service that involves writing. It may be that the regulation was intended to prohibit the carriers from writing reports, making up accounts, registering letters, selling stamps, issuing money orders; and that the manual labor of assorting a handful of letters and throwing them into the appropriate boxes was not intended to be forbidden. It may be that the regulation was in the nature of a police precaution against post-office robberies, by keeping the responsibility in the fewest possible hands. It may be that it was intended to keep each expense of the post-office within its proper appropriation. But certainly the regulation contemplated the employment of carriers on other work than collecting and delivering letters, and authorized postmasters so to employ them "during the intervals between their trips," and compelled carriers to render such service.

Here, then, was a post-office with three clerks and nine carriers, the united force of which was barely able to carry on its business. Under the stress of circumstances the postmaster interpreted the regulation to mean that he might exact from the carriers additional work in the distribution of mail matter within the office, and the court is not prepared to say that his interpretation was wholly and clearly wrong.

Coming now to the kind of work done by the carriers, the court is unqualifiedly of the opinion that whatever work they may be required to do, relating to the mail matter which they distribute and collect, must be regarded as carrier service in construing and applying the eight-hour law. A carrier may receive the letters of his own route and simply arrange them in the order of the streets and numbers; or, all the carriers may receive all the letters which go out by the carrier system, and be obliged
7 to divide the mass according to the routes; or they may have handed to them the newly-arrived mail pouches and be obliged to divide the matter which is to go out from the matter which is to remain within the post-office; that is, the carriers' letters from the box and general delivery letters. We do not say that this last arrangement is wise or judi-

cious; but simply that if carriers are thus employed by the postmaster under whom they serve it will be, in the present state of the law and regulations, carrier service.

As to the distribution of mail matter for boxes and general delivery by carriers during the intervals between their trips, the court can not say in the silence of the Postmaster-General whether it was or was not the clerical service prohibited by the regulation, and in this uncertainty must adopt the construction given by the postmaster to the regulation, a construction which was apparently known to the Department, and which for the purposes of this case must be regarded as the construction of the Department itself.

As to the last kind of service, that which was not rendered during intervals, but after the carriers' day was over, the case is not so clear. The regulation did not by any construction authorize the postmaster to exact this, and it involved the Government under the eight-hour law in an additional liability and was in its practical effect employing one man to do another man's work, contrary to the intent of the Revised Statutes, if section 1764 is applicable to these cases. We agree with the counsel for the defendants that the eight-hour law was not intended as a door of evasion whereby a postmaster could bring into his office additional clerks to do work for additional pay, but the question is doubtful, the necessities of the situation were great, the good faith of the postmaster is undisputed, and the equities of the case are so strongly in favor of the carriers that we deem it only just to resolve doubt in favor of the claimants, who have no right of appeal, leaving it to the Supreme Court to correct the error, if error it be.

We now come to the manner in which this additional time must be reckoned in dollars and cents. As has before been said, the claimants insist that the year should be divided by 292 days instead of 365, and the value of a day of eight hours proportionately increased. From this day of augmented value, it is maintained the value of the additional hours must be derived.

The principle of excluding apparent time which the counsel for the claimants applies to days, the counsel for the defendants, though by a different process of reasoning, applies to hours. He maintains that the additional hours intended by the statute are additional to the carriers' actual hours of service as carrier; that it is not the time during which the carrier is nominally on duty which is to be reckoned, nor the time when the employment proper or improper is within the post-office building, but the time when the carrier is actually engaged in delivering and collecting letters. If the services are more than eight such hours he is entitled to ask additional pay; otherwise, not. Or, as was said on the argument, "The door of the post-office defines the service; service without is carrier service, service within is clerical service." It is apparent that the principle will cut both ways. Applied to days it will augment the value of the additional service, but as very few carriers are actually on their feet eight hours a day running about the streets, it will cut down the hours until there is no additional time left to be paid for.

8 The statute which attaches an annual salary to the service does not fix the amount as compensation for 359 days, *i. e.*, for a year, less six holidays; nor as compensation for 350 days, that is, for a year less 15 leave-of-absence days; nor as compensation for 344 days, *i. e.*, a year

less the holidays and leaves of absence; nor for 292 days, *i. e.*, for a year without holidays, leave-of-absence days, or Sundays. The salary is for a year, and when it was enacted covered all service which the carrier might render or be required to render within a year.

If the suit were brought to recover an unpaid balance of salary we are inclined to think that no question which has been raised by one side or the other would have appeared. If a claimant had held office one day and the suit was to recover one day's pay, we believe that the damages demanded would have been for $\frac{1}{365}$th of the annual salary. Conversely, if the suit had been brought to recover one year's pay less one absent day, we doubt whether it would have entered into any mind to deduct more than $\frac{1}{365}$th for that day. It can not be supposed that a claimant would have said, "In crediting the Government with the value of this one day's deduction, I should credit more than $\frac{1}{365}$th of my year's pay. I should take into consideration Sundays, holidays, leave-of-absence days, and credit the Government with more—with $\frac{1}{292}$ of my annual salary." Neither can we believe that the counsel for the Government would have asked such a computation. Time out of mind men have been employed by the year, and certainly we can recall no case for work and service where a court has introduced such refinements into the measure of damages.

The Treasury computation of the pay of all officers and employés on annual salaries is made substantially on the ordinary basis. The year is divided into four calendar quarters which are almost exactly equal, the first and second on a leap year containing 91 days each, the third and fourth 92. In reckoning a day's pay the fourth part of the annual salary is divided by the number of days in that quarter. In ascertaining this the Treasury disregards Sundays and holidays. If a man holds an office or employment two days in a year he is credited for two days, though one of them may be a Sunday and the other a holiday.

A statute of this nature must be interpreted in conformity with the system upon which it is engrafted. This judgment to be declared here by the court is not an isolated judgment which, when satisfied, will pass out of existence and leave no disturbing element behind it. On the contrary, it will furnish a rule of decision for the Department. Hundreds of carriers will be paid on it for years past and continue to be paid for years to come. Assuredly the judiciary must not give an interpretation to the act which will bring trouble and confusion into the Executive Departments unless its language imperatively requires it.

There is nothing in this statute indicative of the principle by which the value of the extra time shall be computed, and whatever the principle may be it is manifest that regular time and extra time should be estimated by one and the same rule. If the judiciary prescribes one principle, and the accounting officers proceed on another, it is evident that two rates of pay will be given to the different hours of the same day. For eight hours of a day the computation will be on the basis of 365 days in the year; for the additional hours on the basis of 292; and thus trouble and confusion will be brought into the account. A monthly pay roll may show that on the first day a carrier was on duty eight hours; on the second, nine hours; on the third, ten hours; on the fourth, eight hours, etc. The numbers are added, the total is multiplied by the value of the hours at the prescribed annual salary, ascertained from the formulas

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of the Department. But if the accounting officers have to examine every carrier's time for every day in the month and segregate hours which belong to the year of 292 days from hours which belong to a year of 365 days, the statute will have brought a confusing element into the work of accounting which never could have been anticipated by the law-making power.

There is one consideration which seems conclusive of the question. This statute was not intended to change the usage of the Treasury nor to disturb the existing rate of pay, and avowedly does nothing more than provide that the increased pay shall be in proportion to the increased work. That is to say, it does not change the rate of compensation; nor does it provide that a carrier shall be paid for regular work at the rate of $1,000 a year and for extra work at the rate of $1,250. On the contrary, both regular work and additional work are to be paid for at the same rate, however they may be computed. Now, if the construction contended for be given to this statute, the result will be that if a carrier is absent without leave two hours on Monday he will be charged for the two hours of absence on a basis of 365 days in a year, while if he works ten hours on Tuesday he will be credited with two hours excess of time on the basis of there being 292 days in the year. Nothing can be more preposterous than to construe a statute which expressly proportions increased pay to increased work so that a deduction shall be debited at one rate and an addition be credited at another. Certainly if the principle advanced for crediting letter-carriers for extra time is right the principle on which the Treasury has debited officers and employés this hundred years and more for absence is wrong.

The counsel for the defendant has suggested that while the delivery of mail matter is a service which requires the greatest possible promptitude, this eight-hour law may operate as a bounty on tardiness and unnecessary delay and, therefore, should not receive an interpretation conducive to that evil effect. And the Post-Office Department has also said in its circulars of instruction that "more than a million dollars annually" is expended in this free-delivery service, and that in consequence of the eight-hour law "1,852 additional carriers were appointed during the fiscal year of 1888 to enable postmasters to bring the hours of service within the limits of that law." It is undoubtedly true that the system of an eight-hour service involves great expense and is subject or may be subject to abuses. But these are evils to be corrected by statutes and regulations; they cannot be prevented by a strained construction of the law. The intent of the legislative authority as declared by the law itself must have full effect given to it by the judiciary.

In the New York cases a single question arises which was not presented by the others. On week days the carriers were employed more than eight hours, but on Sundays less, and the deficit of the latter nearly equals the excess of the former. The Post-Office Department, by its circular February 19, 1891, has directed postmasters "To determine the time a letter-carrier may have been required to work during any month in excess of eight hours per day, as follows:

"Ascertain the aggregate hours worked during the month. Multiply the number of days worked during the month by eight, and subtract the

product thus obtained from the aggregate number of hours worked, and the remainder will be the extra time for which the carrier is entitled to pay at the following rates:

Salary.	First quarter.	Second quarter.	Third and fourth quarters.	Average quarter.
$600	20⅝ cents per hour.	20⅝ cents per hour.	20⅝ cents per hour.	20⅝ cents per hour.
800	27½ cents per hour.	27½ cents per hour.	27½ cents per hour.	27½ cents per hour.
850	29⅛ cents per hour.	29⅛ cents per honr.	28⅝ cents per hour.	29 5-24 cts. per hour.
1,000	34¼ cents per hour.	34⅜ cents per hour.	34 cents per hour.	34⅛ cents per hour.

"The time necessarily consumed in the performance of the service between "Report for duty" and "End of duty" is the "actual time" to be allowed, and the interim between deliveries is the carrier's own time, and cannot in any case be charged against the United States."

The carrier's eight-hour law declares "that hereafter eight hours shall constitute a day's work," but it allows compensation to continue in the form of an annual salary, and requires no deduction to be made if the duties of the day do not extend through the prescribed time. It also declares that "if any letter-carrier is employed a greater number of hours per day than eight he shall be paid extra for the same." To sustain the interpretation given to the act by the Department, it will be necessary to read in it by construction the words "on an average," *i. e.*, if any letter-carrier is employed on an average a greater number of hours per day than eight, he shall be paid extra for the same. This the court is not at liberty to do. The carrier is entitled to eight hours' work, and to his pay if work is not furnished to him. For any excess on any day he is entitled to extra pay. The only set-off that can be maintained is when he is absent from duty without leave. The Department is at liberty to keep a carrier employed eight hours every day, but not to give him a deficit of work one day and an excess another.

In the case of Aaron S. Post the judgment of the court is that the claimant recover of the defendants the sum of $502.12.

In the case of Frank Gates the judgment is that claimant recover the sum of $56.48.

In the remaining cases submitted judgment will be suspended until the further order of the court.

11 IV.—*Findings of fact and conclusion of law.*

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I.

The claimant was, during the months of May, June, and July, 1888, a letter-carrier of the first class, salary $1,000 a year, in the city of New York, in the State of New York.

II.

From May 24, 1888, to July 31, 1888, he was actually and necessarily employed in the performance of his duties more than eight hours a day, the excess over such eight hours being as follows:

	Hrs.	Min.
May, 1888	16	53
June, 1888	78	58
July, 1888	69	18
Total	165	9

He has received no extra pay for the excess.

III.

For the said period of time claimant performed only fifteen hours of service on the ten Sundays, and four hours and thirty minutes on Decoration Day, and the same time on the 4th day of July.

CONCLUSION OF LAW.

On the foregoing findings of fact the conclusion of law is that the claimant is entitled to recover for the one hundred and sixty-five hours and nine minutes of extra work performed by him, without being required to deduct therefrom the deficit of less than eight hours a day worked on Sundays and holidays, as shown by Finding III, amounting, at 34.2 cents per hour, to $56.48.

12 V.—*Judgment of the court.*

FRANK GATES
vs.
THE UNITED STATES. } 17039.

At a Court of Claims held in the city of Washington on the 10th day of March, A. D. 1892, judgment was ordered to be entered as follows:

The court upon due consideration of the premises find for the claimant, and do order, adjudge, and decree that the said Frank Gates do have and recover of and from the United States the sum of fifty-six dollars and forty-eight cents ($56.48).

BY THE COURT.

13 VI.—*Application of defendants for and allowance of appeal.*

FRANK GATES
vs.
THE UNITED STATES. } No. 17039.

From the judgment rendered in the above-entitled cause on the 10th day of March, 1892, in favor of claimant, the defendants, by their Attorney-General, on the 30th day of March, 1892, make application for, and give notice of, an appeal to the Supreme Court of the United States.

JOHN B. COTTON,
Assistant Attorney-General.

Filed and allowed in open court, March 30, 1892.

WILLIAM A. RICHARDSON,
Chief Justice.

14 IN THE COURT OF CLAIMS.

FRANK GATES
vs.
THE UNITED STATES. } No. 17039 B.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the court, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 23d day of April, A. D. 1892.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) Court of Claims. Case No., 15027. Term No., 1060. The United States, appellant, vs. Frank Gates. Filed April 25, 1892.

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Office Supreme Court U. S.
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FEB 3 1893
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, APPELLANT,
vs.
FRANK GATES.
} No. 1060.

APPEAL FROM THE COURT OF CLAIMS.

STATEMENT ON BEHALF OF THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, APPELLANT,
vs.
FRANK GATES. } No. 1060.

APPEAL FROM THE COURT OF CLAIMS.

STATEMENT ON BEHALF OF THE UNITED STATES.

In my opinion the decision of the court below was correct, and I am only prevented from dismissing the appeal by the fact that another Department of the Government has differed from this view and declines to follow it until the question is authoritatively decided by this court.

Justice to the letter-carriers seems, therefore, to require that the case be submitted to the court for its determination, which I respectfully do, without argument.

CHARLES H. ALDRICH.
Solicitor-General.

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FILED.
JAN 25 1893
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 1060.

THE UNITED STATES, Appellant,

vs.

FRANK GATES.

BRIEF FOR APPELLEE.

CHARLES KING,
GEORGE A. KING,
WILLIAM B. KING,
Attorneys for Appellee.

H. L. McQUEEN, PRINTER.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, Appellant,
vs.
FRANK GATES. } No. 1060.

BRIEF FOR APPELLEE.

I. Statement of the Case.

The claimant, Frank Gates, by his petition in the Court of Claims, filed May 27, 1891 (p. 1), made claim against the United States for extra pay as a letter-carrier at the city of New York, for time during which he was employed in his duties in excess of eight hours a day. The claim was based on the act of May 24, 1888 (1 Supplement to Revised Statutes, 2d edition, p. 587), a copy of which is contained in the opinion of the Court of Claims in this case, p. 2, and which is also quoted in full in our brief in the case of *The United States, Appellant*, v. *Aaron S. Post*, No. 1061.

The claimant was from May 24 to July 31, 1888, a letter-carrier of the first class at the post-office at New York (Finding 1, p. 8). As such he was, by the act of January 3, 1887, § 3 (1 Supp. Rev. Stat. 2d Ed., pp. 518, 519), entitled to a salary of $1,000 a year. During his term of service he was actually and necessarily employed in the preformance of his duties for 165 hours and 9 minutes in excess of 8 hours a day, for which he has received no extra pay (Finding II, p. 9). During the ten Sundays of that

period, however, he performed an aggregate of only 15 hours' service, and on Decoration Day and the 4th of July he worked only 4 hours and 30 minutes on each day (Finding III, p. 9). The Court of Claims held (conclusion of law, p. 9) that he was entitled to recover extra pay for the entire time, 165 hours and 9 minutes, without being required to deduct therefrom the deficit of less than eight hours a day worked on Sunday and holidays, and granted him judgment (p. 9), amounting, at the rate of 34.2 cents per hour, to $56.48.

From that judgment the United States appealed (p. 9).

II. Brief of Argument.

The only question in this case is whether a letter-carrier who, by working more than eight hours in any one day earns extra compensation under the act of May 24, 1888, is to be deprived of the benefit of that act by the fact that on Sundays and legal holidays he may have worked less than eight hours.

Up to the time of the argument of the present case it had always been supposed to be the policy of the law to enforce so far as possible a cessation from labor on the first day of the week, commonly called Sunday, and that such exceptions as are admitted to that rule are grounded upon ideas of public or private necessity. If the contention of the United States in this case is well founded, we have here a law which requires a certain class of officers of the United States to labor for eight hours a day the whole year round in order to earn their regular pay before they can be entitled to any benefit from the statute allowing them extra pay for extra work.

The sections of the Postal Laws and Regulations defining the quantity of work to be done on Sundays and holidays are not set forth in the findings of fact by the Court of Claims. But being contained in a volume (Postal

Laws and Regulations, 1887) published and proclaimed by the Postmaster-General for the guidance of postmasters and others connected with the postal service, there seems to be no reason why this court may not take judicial notice of them.

They are as follows:

"SEC. 481. *Business Hours at Post-offices.*—Every postmaster must keep his post-office open for the dispatch of business every day, except Sundays and holidays, during the usual hours in which the principal business houses in the place are kept open, and attend at such other hours as may be necessary to receive and dispatch mails. When the mail arrives on Sunday he will keep his post-office open for one hour or more after the arrival and assortment thereof, if the public convenience require it, for the delivery of the same only. If it be received during the time of public worship, the opening of the post-office will be delayed until services have been closed. He need not open his office during the day of Sunday, if no mails arrive after the closing of the office on Saturday and before 6 o'clock Sunday afternoon. While open, stamps may be sold to any one applying for them; but money orders must not be issued or paid, nor letters registered on that day. Delivery on Sunday must not be restricted to box holders, but made to all who call while the office is open. The office on week days should not be closed during meal hours.

"The windows in connection with the carriers' department must be opened for the delivery of mail matter during office hours on Sundays, holidays, and in the evening after the last carrier delivery.

"SEC. 483. *Holidays.*—Postmasters may observe as holidays January 1st, July 4th, December 25th, and such other days as the President of the United States or the Governors in their respective States may designate as fast or thanksgiving days or proclaim specially as holidays. On May 30th post-offices may be closed between the hours of 10 o'clock A. M. and 5 o'clock P. M., if the postmaster thinks best. On other occasions their offices can be closed only after permission obtained therefor

from the Department, to be applied for through the First Assistant Postmaster-General. Upon holidays post-offices must be open sufficiently to meet fairly the public convenience."

The same days are also made holidays by Statute. 1 Supp. to Rev. Stat. 2d ed. pp. 486, 574.

It may be proper to note also that in New York, where this claim originated, all public offices are required to be closed on Sundays and holidays, the portion of the statute material in this connection being as follows (4 Revised Statutes of New York, 8th edition, pp. 2505, 2506):

"L. 1875, Chap. 27.—An act to designate the holidays to be observed in the acceptance and payment of bills of exchange, bank checks and promissory notes, and relating to the closing of public offices. (Title thus amended by L. 1881, ch. 30.)

"*Days to be considered as Public Holidays; no Business to be Transacted in Public Offices on Holidays.*

"SECTION 1. The following days and half days, namely: The first day of January, commonly called New Year's Day; The twenty-second day of February, known as Washington's Birthday; the thirtieth day of May, known as Decoration Day; the fourth of July, called Independence Day; the first Monday of September, to be known hereafter as Labor Day; any general election day in this State; every Saturday from 12 o'clock at noon until 12 o'clock at midnight, which is hereby designated a half-holiday; and any day appointed or recommended by the Governor of this State, or the President of the United States, as a day of thanksgiving or fasting and prayer, or other religious observance, shall, for all purposes whatever as regards the presenting for payment or acceptance, and if the protesting and giving notice of the dishonor of bills of exchange, bank checks, and promissory notes, made after the passage of this act, be treated and considered as the first day of the week, commonly called Sunday, and as public holidays or half-holidays." * * *

"And the days and half-days aforesaid shall be consid-

ered as the first day of the week, commonly called Sunday, and as public holidays or half-holidays, for all purposes whatsoever as regards the transaction of business in the public offices of this State, or counties of this State. On all other days, or half days, excepting Sunday, such offices shall be open for the transaction of business. (Thus amended by L. 1887, ch. 289, superseding L. 1881, ch. 30.)

Where Holidays fall on Sunday.

"SECTION 2. Whenever the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth of July, or the twenty-fifth day of December shall fall upon Sunday, the Monday next following shall be deemed a public holiday for all or any of the purposes aforesaid;

"*Provided, however,* That in such case all bills of exchange, checks, and promissory notes, made after the passage of this act, which would otherwise be presentable for acceptance or payment on the said Monday, shall be deemed to be presentable for acceptance or payment on the secular or business day next succeeding such holiday." (Thus amended by L. 1887, ch. 289.)

Although a State law can not of its own force control the operation of the public business of the United States, the law of New York, which is believed to be in this respect, not materially different from those of all the other States of the Union, is at least evidence, if any evidence beyond common knowledge be needed, of the general custom and understanding in all the public offices in the country. So far as there is any declared public policy on the part of the Federal Government in relation to Sunday labor it is all in the same direction. By the old Maryland law, which, by section 92 of the Revised Statutes of the United States relating to the District of Columbia, is continued in force at the seat of Government,—

"No person whatsoever shall work or do any bodily labor on the Lord's day, commonly called Sunday, and

that no person having children, servants, or slaves shall command or wittingly or willingly suffer any of them to do any manner of work or labor on the Lord's day (works of necessity and charity always excepted)." (Thompson's Digest Laws of D. C. p. 318.)

And similar laws against Sunday labor exist in every State of the Union. (2 Parsons on Contracts, 757–765; 1 Wharton on Contracts, §§ 382–391.)

The Constitution of the United States excepts Sunday from the days allowed to the President, to determine whether he will approve or veto a bill passed by both houses of Congress. In *Holy Trinity Church* v. *United States* (143 U. S. 457, 470) it was stated that this provision is common to many constitutions.

And in appropriating money for the World's Fair it was made by Congress a specific condition that the entire exposition be closed on Sunday. (27 Statutes, 363, 388, 390.)

In ordinary contracts of hiring and service, an agreement for eight hours a day labor would certainly not be construed as requiring Sunday labor, even admitting that such a contract could be valid.

Why then should it be considered that a carrier before becoming entitled to extra pay for excess of service on week days should be compelled to labor for eight hours on Sunday and holidays in contravention of the wise public policy prohibiting more labor on such days than is absolutely requisite for the public good?

The Court of Claims, in deciding this case adversely to the contention of the United States, placed its ruling upon a broader but equally conclusive ground, which was thus stated:

"The carriers' eight hour law declares 'that hereafter eight hours shall constitute a day's work,' but it allows compensation to continue in the form of an annual sal-

ary, and requires no deduction to be made if the duties of the day do not extend through the prescribed time. It also declares that 'if any letter-carrier is employed a greater number of hours per day than eight he shall be paid extra for the same.' To sustain the interpretation given to the act by the Department, it will be necessary to read in it by construction the words 'on an average,' *i. e.* if any letter-carrier is employed on an average a greater number of hours per day than eight, he shall be paid extra for the same. This the court is not at liberty to do. The carrier is entitled to eight hours' work, and to his pay if work is not furnished to him. For any excess on any day he is entitled to extra pay. The only set-off that can be maintained is when he is absent from duty without leave. The Department is at liberty to keep a carrier employed eight hours every day, but not to give him a deficit of work one day and an excess another."

The judgment of the Court of Claims should therefore be affirmed.

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